HON'BLE SHRI G.S.SINGHVI, THE CHIEF JUSTICE
AND
HON'BLE SHRI JUSTICE C.V.NAGARJUNA REDDY

WRIT PETITION No.6166 of 2007

Between:

M/s. Md.Azeez, Works Contractor,
6-3-65/2, Bank Colony, Khammam,
Rep., by its Proprietor Mr. Azeez.

... Petitioner

AND

The Commercial Tax Officer-II (FAC),
Khammam and two others.

... Respondents

; O R D E R :

Counsel for the petitioner : Shri Bhaskar Reddy Vemireddy

Counsel for respondents : Government Pleader for Commercial Tax

Dated: 3rd April, 2007

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Per C.V.NAGARJUNA REDDY, J.

In this petition, the petitioner has prayed for quashing order dated 22.12.2006 vide which Joint Commissioner (CT), Legal, O/o. the Commissioner of Commercial Taxes, Andhra Pradesh (respondent No.3) rejected its prayer for stay during the pendency of the appeal filed against the revisional order passed by Deputy Commissioner (CT), Warangal Division, Warangal (respondent No. 2).

The petitioner is a works contractor and is also registered as a dealer under the Andhra Pradesh General Sales Tax Act, 1957 (for short 'the Act'). For the assessment year 2001-2002, the Commercial Tax Officer-II (FAC) Khammam (respondent No. 1) assessed the petitioner's gross turnover at Rs.58,63,099/- and net turnover at Rs.17,37,681/- and exempted a turnover of Rs.41,25,418/-. Accordingly, he passed order dated 18.10.2003 for assessing the petitioner. Respondent No.2 exercising his power under Section 20(2) of the Act, revised the assessment and passed order dated 28.6.2006 whereby he disallowed the exemption to the extent of Rs.22,49,233/-.

Feeling aggrieved by the order of the second respondent in revising the assessment, the petitioner filed an appeal before the Sales Tax Appellate Tribunal. It also filed an application for stay, which was rejected by respondent No. 3 by making a reference to the order passed by this Court in Writ Petition No. 3136 of 2006.

Sri V. Bhaskar Reddy, learned counsel for the petitioner submitted that the work undertaken by the petitioner was spread over a period of more than one assessment year and that the second respondent was not

justified in treating the entire turnover as turnover for the assessment year 2001-2002. He further submitted that the petitioner raised substantive grounds in the appeal filed before the Sales Tax Appellate Tribunal but, without considering the same, respondent No. 3 arbitrarily rejected the prayer for stay.

Sri A.V.Krishna Koundinya, learned Government Pleader for Commercial Tax, on the other hand, sought to support the order passed by the third respondent by contending that the third respondent need not give elaborate reasons while disposing of the stay application and that the impugned order shows that the third respondent has taken into consideration the material facts while rejecting the application for stay.

We have considered the respective submissions.

The third respondent, though a government functionary, is entrusted with quasi judicial functions under the extant rules to consider and decide the stay application. It is, therefore, obligatory for him to make a judicious approach in disposing of such applications. The elements of prima facie case, balance of convenience, irreparable injury and public interest, which are germane for the Courts in deciding the interlocutory applications, are equally relevant for a quasi-judicial authority like the third respondent in disposing of the stay applications. Therefore, whenever orders disposing of the stay applications are made, they should reflect application of mind by the concerned authority to the aforementioned three ingredients. It is also settled law that every quasi-judicial authority must record reasons in support of its decision and communicate the same to the affected persons.

In **Cyril Lasrado (dead) by L.Rs., and Others vs Juliana Maria Lasrado and Another**[1], while highlighting the importance of giving reasons, the Supreme Court in Para-12 held as under:

" Even in respect of administrative orders Lord Denning, M.R. in

> *Breen* v. *Amalgamated Engg. Union* (*1971* (1) *All E.R 1148 : (1971) 2 QB 175 : (1971) 2 WLR 742 (CA)*) " The giving of reasons is one of the fundamentals of good administration." In *Alexander Machinery (Dudley) Ltd. V. Crabtree 1974 ICR 120* it was observed "Failure to give reasons amounts to denial of justice. Reasons are live links between the mind of the decision-taker to the controversy in question and the decision or emphasis on recording reasons is that if the decision reveals the "inscrutable face of the sphinx", it can, by its silence, render it virtually impossible for the courts to perform their appellate function or exercise the power of judicial review in adjudging the validity of the decision. Right to reason is an indispensable part of a sound judicial system, reasons at least sufficient to indicate an application of mind to the matter before court. Another rationale is that the affected party can know why the decision has gone against him. One of the salutary requirements of natural justice is spelling out reasons for the order made, in other words, a speaking out. The "inscrutable face of the sphinx" is ordinarily incongruous with a judicial or quasi-judicial performance."

In the present case, we find that respondent No. 3 has not appreciated the main contention raised by the petitioner for challenging order dated 28.6.2006 passed by respondent No. 2. He used the stock words and dismissed the application simply by making reference to an order passed by this Court.

In our opinion, disposal of stay application by respondent No. 3 is wholly unsatisfactory and the order under challenge is liable to be set aside.

While it is true that the courts and authorities should be circumspect in granting interim orders in cases involving State revenues, it is equally important to consider whether in a given case the balance of convenience lies in favour of granting interim stay, unconditional or with conditions, whether the party suffers irreparable injury by refusal to grant stay and whether granting stay affects public interest. The third respondent, in our considered view, failed to apply these essential parameters in disposing of

stay application filed by the petitioner and instead he had rather disposed of the said application in a routine and mechanical manner. We are, therefore, inclined to set aside the impugned order.

In the result, the writ petition is allowed setting aside the impugned order and the third respondent shall dispose of the stay application dated 5.12.2006 afresh after giving the petitioner an opportunity of hearing in the light of the observations made in this order, within a period of two weeks from the date of receipt of a copy of this order.

C.V. NAGARJUNA REDDY, J

G.S.SINGHVI, CJ

Date: 03-04-2007.

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[1] (2004) 1 SCC 431